DOCUMENT RESUME

ED 191 198 EC 124 559

AUTHOR	Ross, John W.
TITLE	Policy Options Relating to the Surrogate Parent Mandates of the Education for Handicapped Children Act (Public Law 94-142).
INSTITUTION	Council for Exceptional Children, Reston, Va. Policy Research Center.
SPONS AGENCY	Bureau of Education for the Handicapped (DHEW/OE), Washington, D.C.
PUB DATE	Sep 79
GRANT	G007702411
NOTE	63p.; Policy Options Project Series.
EDRS PRICE	MF01/PC03 Plus Postage.
DESCRIPTORS	Child Advocacy; Children; Civil Liberties; *Disabilities; *Federal Legislation; Foster Children; *Policy; State Legislation; *State Standards
IDENTIFIERS	*Education for All Handicapped Children Act; Guardianship; *Surrogate Parents

ABSTRACT

The report considers state and federal policy issues regarding parent surrogates for handicapped children as mandated by P. L. 94-142, the Education for All Handicapped Children Act. Clarification about the limited advocacy role of the parent surrogate is given. The first chapter looks at identification of students who need surrogate parents: children whose parents are not known, unavailable, or children who are wards of a state. Chapter II focuses on legal issues and educational considerations in appointing a surrogate parent (through passage of a statute, existing state guardianship laws, or by the state or local education agency). The rights, selection, training, and compensation of surrogate parents are addressed in the third chapter. A final chapter lists basic policies and policy options regarding identification, appointment, rights, selection, training, and compensation. The appendix charts statutory and regulatory language for surrogate parents. (CL)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED191198

U S DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
NATIONAL INSTITUTE OF
EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

POLICY OPTIONS RELATING TO THE SURROGATE PARENT MANDATES OF THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT (PUBLIC LAW 94-142)

John W. Ross
Education Specialist

Policy Options Project

September 1979

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

C. E. C.

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

The Council for Exceptional Children
1920 Association Drive
Reston, Virginia

EC 124559

Published in 1980 by The Council for Exceptional Children

The work performed herein was done pursuant to a grant from the Bureau of Education for the Handicapped, U.S. Office of Education, Department of Health, Education, and Welfare (Grant Number: G007702411). The opinions expressed herein, however, do not necessarily reflect the position or policy of the U.S. Office of Education, and no official endorsement by the U.S. Office of Education should be inferred.

TABLE OF CONTENTS

	Page
INTRODUCTION	1
Methodology	3
Situating the Policy Issues	4
I. IDENTIFYING THE POPULATION IN NEED OF A SURROGATE PARENT	7
"Wards of the State"	8
Parents or Guardian "Unavailable"	10
Parents or Guardian "Not Known"	15
Implications for Policy Makers	17
Concluding Observations	18
II. THE APPOINTMENT OF A SURROGATE PARENT: LEGAL ISSUES AND EDUCATIONAL CONSIDERATIONS	20
Options for Appointing Surrogate Parents	20
Passage of a State Surrogate Parent Statute	22
State Statute Option 1: Court Appointment	22
State Statute Option 2: State Board of Education Appointment	23
State Statute Option 3: Department of Human Resources Appointment	25
Positive Effects Related to the Passage of a State Surrogate Parent Statute	26
Appointment of a Surrogate Through Existing State Guardianship Laws	27
State Guardianship Laws: Various Interpretations and Practices	28
Policy Option 1: Guardian Ad Litem	29
Policy Option 2: Limited Guardianship	30
Implications for Policy Makers	30
Appointment of Surrogate Parents by the State Education Agency or Local Education Agency	32
Termination of Assignment of a Surrogate Parent	34

Page

Concluding Observations 35

III. SURROGATE RIGHTS, SELECTION, TRAINING AND COMPENSATION 36

Policy Area 1: Surrogate Rights and Levels of Parental Involvement 36

Policy Area 2: Selection of Surrogate Parents 37

Policy Area 3: Training of Surrogate Parents 40

Policy Area 4: Compensating Surrogate Parents 43

Concluding Observations 44

IV. BASIC POLICIES AND POLICY OPTIONS RELATING TO THE SURROGATE PARENT PROVISIONS OF P.L. 94-142 46

I. Identifying the Population in Need of a Surrogate Parent 46

Basic Policies 46

Policy Options 46

II. The Appointment of a Surrogate Parent: Legal Issues and Educational Considerations 47

Basic Policies 47

Policy Options 48

III. Surrogate Rights, Selection, Training, and Compensation 49

Basic Policies 49

Policy Options 49

APPENDIX A - SURROGATE PARENTS: STATUTORY AND REGULATORY LANGUAGE 51

REFERENCES 54

INTRODUCTION

To insure that the rights of handicapped children and their parents are protected, The Education for All Handicapped Children Act (P.L. 94-142) mandates that parents or guardians must have an opportunity to fully participate in all educational decision making processes affecting their child. Such interaction is based on a shared decision making model and occurs during the identification, evaluation and placement of a handicapped child, as well as possible hearing, mediation and appeal procedures provided for in federal and state law. The assumption is that the parents or guardian will be available to participate in the process and will represent their child's best interests until the age of majority is reached.

P.L. 94-142 regulations state that the term "parent" means "a parent, a guardian, a person acting as a parent of a child, or a surrogate parent who has been appointed... The term does not include the State if the child is a ward of the State" (§121a.10). When a child's parents or guardian are not known, unavailable or the child is a ward of the state, accommodations must be made to protect the best interests of the student. In establishing the surrogate parent provisions, Congress recognized that this population of children needs an independent advocate to represent them in all matters relating to educational decisions, including the provision of a free appropriate public education.

Consequently, the role of the surrogate parent, i.e., a qualified adult appointed to safeguard a child's rights in the specific instance of educational decision making, is designed to meet this need in the particular areas of identification, evaluation, and placement of a handicapped child (Abeson, Bolick and Hass, 1976).

In 1975, the United States Congress passed Public Law 94-142 which reinforced a provision contained in The Education Amendments of 1974 (P.L. 93-380) requiring that surrogate parents be appointed when necessary. Both of these federal mandates provide procedural safeguards to insure that all educational decisions affecting a handicapped child are decided with the active participation of a qualified person serving as an educational advocate on behalf of the child. The intent of the surrogate provision in P.L. 94-142 is to guard against the inappropriate education of handicapped children due to a lack of representation when educational decisions are considered and made.

To be in compliance with Public Law 94-142 and to be eligible for federal funds for the education of handicapped children, all state and local educational agencies are required to establish and maintain:

> (B) procedures to protect the rights of the child whenever the parents or guardian of the child are not known, unavailable, or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State educational agency, local educational agency, or intermediate educational unit involved in the education or care of the child) to act as a surrogate for the parents or guardian." (Sec. 615(b)(1)(B))

Regulations for P.L. 94-142 provide that a surrogate parent may be selected in any way permitted under State law (§121a.514(c)(1)). An analysis of state statutes indicates that few state laws specifically concern surrogate parents. This lack of legal precedent is cited in several 1979 Annual Program Plans submitted to the Bureau of Education for the Handicapped (BEH) as one of the major barriers to the implementation of the surrogate concept. While the regulations for P.L. 94-142 require the public agency to devise a method for determining whether a child needs a surrogate parent and for assigning a surrogate parent if needed, no specific guidance is given to implement these requirements.

Kotin (1979) maintains that because the surrogate parent concept has no specific precedent in state law and administrative practice, its implementation

has necessitated the development of new systems to insure the integration of educational advocacy into the existing structure for providing children's services. As set forth in P.L. 94-142, state and local agencies were responsible for implementing the surrogate parent mandates by October 1, 1977. All states submitting a FY 1979 Annual Program Plan to BEH explicitly address the surrogate issue; few states, however, have actually undertaken the steps necessary for adequate implementation.

Research findings indicate a need for the development of clearly defined policies and procedures on state and local levels relating to surrogate parent issues. To assist policy makers in implementing the surrogate parent mandates of P.L. 94-142, this policy options paper will address selected legal and educational policy issues related to the identification of the population of children in need of a surrogate parent, outline alternative methods for appointing surrogates, and will present administrative policy options for implementing surrogate parent programs on state and local levels.

Methodology

The data presented and interpreted in this paper result from an analysis of P.L. 94-142 mandates and regulatory provisions, a critical review of the 1979 Annual Program Plans submitted to the Bureau of Education for the Handicapped, an analysis of selected state and local educational policies and practices, a review of professional literature relating to the surrogate parent concept, and personal interviews. Throughout this policy options paper significant issues related to statutory and regulatory language will be indentified, pertinent data needed by policy makers will be presented and interpreted, and the anticipated ramifications of the various alternatives presented will be outlined. Such a methodology presents policy makers with options for establishing policies

and procedures to implement surrogate parent mandates either within the framework of present state laws and existing systems, or through the passage of new legislation and development of new mechanisms to insure the integration of advocacy in the educational decision making process.

Situating the Policy Issues

One of the significant features of P.L. 94-142 is that it mandates the active participation of informed persons in the educational decision making process to provide a free appropriate public education for each handicapped child. Usually a child's parents or guardian serve as an advocate in this discerning process. However, when a parent or guardian is not known, unavailable, or the child is a ward of the state, someone else must assume the responsibility of advocating on behalf of the child. Because of the educational benefits derived from the collaboration of a surrogate and school officials, and to insure that the rights of the child are protected, P.L. 94-142 regulations require that each public agency establish a method for determining whether a child needs a surrogate parent and for assigning a surrogate to the child when appropriate (§121a.514(3)(b)).

As states seek to establish methods for identifying a particular population of students in need of a surrogate parent and contemplate alternatives for selecting a surrogate in a way permitted under state law, it should not be surprising that legal, policy, and administrative issues have arisen which impede the educational decision making process. Research findings indicate that these issues, among others, are frequently cited as barriers to the implementation of the surrogate mandates of P.L. 94-142: the constitutional rights of natural parents; the educational and civil rights of children; the source of authority to appoint a surrogate; the liability incurred by a surrogate acting on a child's behalf; the definition of an "unavailable parent"; the role of natural parents when a

child has been voluntarily placed in an institution or foster care; and methods for selecting, training and monitoring surrogates (O'Donnell, 1977; Kotin, 1979; McLaughlin and London, 1979). Due to the apparent complexity of one or more of these issues, policy makers are sometimes hesitant to even seek viable options for implementing the surrogate mandates.

This policy options paper is a preliminary attempt to address, not resolve, these and similar issues. While not denying that complex legal issues may arise as a result of the implementation of the surrogate concept, the primary intent of this paper is to address the surrogate issue from a researchable policy perspective. Public policy should serve as the basis for all educational decision making and is an evolving process open to expansion and clarification.

The surrogate parent should be viewed as an educational advocate who is a qualified resource person to facilitate the interrelationship between two complex bureauracies - education and public children's welfare services - in order to maximize the educational opportunity of a handicapped child (McGoff and Oxholm, 1979). The surrogate parent concept, as intended in federal legislation, is meant only to assure appropriate decision making in educational matters. Other non-educational matters pertinent to a handicapped student's welfare would not be the responsibility of a surrogate parent. For example, the surrogate parent has no authority over care and maintance of the child, custody of the child, foster home placement of the child, or any other area not specifically related to the education of the child. Simply defined, a surrogate is an educational advocate for a child in need of such representation, not a legal guardian, court appointed custodian, or usurper of parental rights. This clarification could help to alleviate some of the misunderstanding surrounding the surrogate concept.

If the surrogate is perceived in this limited advocacy rule, the focus shifts from initial concern with legal issues to a discussion of children potentially in need of special education and related services. Consequently, the

primary researchable policy question is "Who are the children in need of an educational advocate?" This population, whose parents or guardian are not known, unavailable, or who are wards of the state, will be identified in Chapter I of this policy options paper.

Once this population has been identified, attention can then be directed toward related legal and educational considerations for appointing a surrogate parent. At least three policy options exist to appoint a surrogate in accordance with the mandates of P.L. 94-142. All three options will be presented in Chapter II and deserve serious consideration, since there clearly are positive and negative ramifications that policy makers should be aware of in establishing a method for assigning a qualified surrogate.

In Chapter III, related issues such as surrogate rights, selection, training, and compensation options will be addressed. Since federal policy in these areas is minimal, persons charged with formulating policies and procedures on state and local levels should benefit from the research findings and policy options presented.

Finally, a compilation of policy options presented throughout this paper, as well as basic surrogate parent policies required by P.L. 94-142, will be included in Chapter IV. Further interpretation and clarification of policy issues undoubtedly will occur in the future as implementation of the surrogate parent mandates continues. Meanwhile, it is hoped that this policy options paper will enable policy makers to begin formulating policies and procedures that will result in qualified adults being appointed, when necessary, to safeguard a child's rights in the specific instance of education decision making, including the identification, evaluation, and placement of a handicapped child.

Chapter I
IDENTIFYING THE POPULATION IN NEED OF A SURROGATE PARENT

No one knows exactly how many children are in need of a surrogate parent. Neither P.L. 94-142 nor its regulations specifically define the population of children - those whose parents or guardian are "not known" or unavailable" or children who are wards of the state - in need of such an educational advocate. Estimates differ depending upon one's interpretation of statutory and regulatory language. Theoretically, such data should be available from various public institutions committed to serving children; realistically, however, the informational gaps document the lack of interagency cooperation in identifying and serving families in need. Federal and state data collection efforts are frequently non-existent or incomplete (Knitzer, et.al., 1978).

According to 1970 U.S. Bureau of Census data, there were approximately 2.5 million children under 18 years of age who were living with neither parent; 1.6 million were in homes with relatives, 434,000 in households in which they were not related to the head, 247,000 in institutions and another 160,000 in group quarters other than institutions. Based on a 1975 survey of children out of their homes, the Children's Defense Fund projected that nationally there were over 448,000 children in out-of-home care who are the responsibility of public child welfare agencies. This figure does not include children who are the responsibility of probation, mental health, mental retardation or special education systems. Research findings by Biaggi (1976) and Shyne and Shroeder (1978) indicate that between 350,000 and a half a million children are in foster care. A conservative estimate that 10% of these children are in need of special education and related services suggests the scope of the problem of identifying the population of handicapped children in need of a surrogate parent.

Unquestionably, policy issues arise as to what is meant by parents or a

guardian who are "not known" or "unavailable" and how the special educational needs of a child who is a "ward of the state" can be better met. The interpretation of the statutory language and the formulation of federal and state policies will impact on the identification of children in need of a surrogate parent. Several states have formulated their own definitions to facilitate implementation procedures whenever the parents or guardian of a child are "not known" or "unavailable." Prior to an analysis of these selected definitions, attention will first be focused on children who are "wards of the state," since they potentially constitute the largest population of children in need of a surrogate parent and are the most easily identifiable population.

"Wards of the State"

In the absence or inability of parents to provide care, protection, or guidance for a minor, it becomes the responsibility of the state to assure substitute residential care and protection for the child. Given such a situation, a child becomes a ward of the state when a juvenile or family court assigns him/her to an appropriate public agency for the provision of whatever services are needed. A ward of the state may reside in a public institution or be placed in a foster home. In either residential placement, P.L. 94-142 mandates that such a handicapped child is in need of a surrogate parent.

Regulatory provisions list few criteria for the selection of a surrogate for a child, but two of the criteria are pertinent in this area: (1) a person assigned as a surrogate may not be an employee of a public agency which is involved in the education or care of the child (§121a.514(d)), and (2) a surrogate cannot have interest that conflicts with the interests of the child he or she represents §121a.514(c)(1)).

These provisions are significant in that they not only protect children, but also protect public employees from being placed in a position inherently in conflict.

Consequently, these provisions are beneficial to the employee as well as the child (Weintraub, 1978). An objective third party who possesses the knowledge and skills to insure adequate representation of handicapped child's rights, is the best safeguard for the educational interests of the minor who is a ward of the state. Policy makers should not conclude, however, that all employees of a public agency are prohibited from becoming a surrogate parent. For example, a nurse in a residential facility who is qualified may serve as a surrogate for a parentless handicapped child attending public school (Bersoff, 1979). No conflict of interest is evident in such an appointment.

Many children who are wards of the state are placed in foster homes. The parents of these children have temporarily relinguished custodial care and although the foster parents provide for the daily needs of such children, they are not regarded as legal guardians (Abeson et.al., 1976). The question arises as to whether or not a foster parent can participate in the educational decision making process and represent the child's best interests. Decisions must be made to determine if a foster parent is qualified and interested in serving in such a capacity, and assurance must be given that the foster parent has no interest that conflicts with the interest of the child (s)he represents.

If it appears that a foster parent is qualified and interested in serving in such a capacity, it may be in the best interests of the child to have such a person appointed as a surrogate. Before making such an appointment, however, a public agency should determine that the foster parent has the knowledge and skills necessary to represent the child in the educational decision making process. Such a determination can be made and the assignment conditioned by a foster parent's participation in a surrogate parent training program. Again, it should be emphasized that while the positive advantages of assigning a qualified foster parent to serve as a surrogate are obvious, policy makers should not

presume that such an appointment in every case is beneficial for the child. Other adults could well be more qualified and committed to fulfilling such a role over a longer period of time, especially since children frequently move from one foster home to another.

No conflict of interest on the part of the foster parent appears to be evident if a qualified foster parent is appointed as a surrogate, since such a person is not legally regarded as an "employee" of the agency providing services to the child. Consequently, the Division of Special Education of Vermont has been working with the Department of Social Rehabilitative Services to identify, screen and select foster parents to serve as surrogate parents for those children under their care. The Division has taken the position that because the income derived from foster parenting is not taxable, foster parents are not employees (Thomas' Memo, 1979) Nor should a person be regarded as an employee of a public agency solely because s(he) is paid by a public agency to serve as a surrogate (§121a. 514(d)(2)). Furthermore, the consent decree in Mattie T. v. Holladay (1979) stipulates that "For children to have been placed by a court in the legal custody of a public agency and who are living with foster parents, the foster parents shall serve as surrogate parents" (III, 12(c)(i)).

Parents or Guardian "Unavailable"

One of the most complex issues to be resolved in identifying a child in need of a surrogate is to determine when a parent or guardian is "unavailable." Such a determination requires decision makers to consider the many reasons why a parent or guardian cannot act on behalf of a child. Illness, injury, institutionalization, physical distance, etc., among other causes, may make parents or a guardian "unavailable." A Connecticut state statute defines that "'unavailable' shall include, but not be limited to, a parent or guardian who is committed to

a mental institution, incarcerated or otherwise unable to act as the child's advocate in the educational decision-making process" (Connecticut Statute §10-94f).

Untouched by the courts and unresolved by policy makers is the competition between a parent's rights and a child's rights raised by the surrogate parent provisions of P.L. 94-142. While the impact of these rights extends far beyond the parameters of P.L. 94-142, policy makers must be prepared to address this issue when defining the statutory meaning of "unavailable" parents. On the one hand, policy makers must consider the right of the child to be represented in the education decision making process. However, parental rights to the care, control, and custody of their children cannot be abrogated without substantial cause (Bersoff, 1978). Yohalem (1979) maintains that so long as adequate efforts have been made to locate the absent parent and the power to make educational decisions is returned to the parent as soon as the parent appears or has authority restored by a court, the appointment of a surrogate does not intrude upon any constitutional rights of the natural parent.

It is important to note that P.L. 94-142 regulations do not use the statutory term "unavailable." In listing the three categories of children in need of surrogate parents, the regulations equate the statutory term "unavailable" with those situations in which "The public agency, after reasonable efforts, cannot discover the whereabouts of a parent" (§121a.514(a)(2)). The result of this regulatory conversion of "unavailable" to "unlocatable" could have a detrimental effect on the educational decision making process (Gater, 1979). It could leave unrepresented those children whose parents' whereabouts are known, but whose parents are unavailable to participate in the identification, evaluation, and placement process. One possible resolution for assuring proper representation in the decision making process would be to include in state and local policy the concept of non-participation within the definition of an "unavailable" parent or guardian.

In practice, some parents apparently make themselves "unavailable" by being "uncooperative." One potential result of such action by an uncooperative parent is the ability to deny possible special education and related services for their child by refusing to give consent for an evaluation. Under present federal regulations, "uncooperative" should not be construed as "unavailable." A person should not be appointed a surrogate in those situations where the parents or guardians, when known, do not respond to communications, or are uncooperative, or do not act to protect the interests of their child. (Appendix A, Surrogate Parents §121a.514, Comment/Response, p. 42512).

While this regulatory comment seems to protect the rights of parents, it needs to be interpreted in such a way that a child does not suffer any harm due to the indifference and non-involvement of the natural parents. P.L. 94-142 regulations include among the procedural safeguards the requirement of parental consent prior the evaluation of a child (§121a.504). However, if a parent does not cooperate or refuses to give consent, all special education and related services are potentially nullified. The argument can be made that refusal to consider a free appropriate education for a handicapped child is tantamount to deprivation of an education. In some situations, the appointment of a surrogate may be the only means of protecting the rights of the child. The positive benefit of such an action is that the unique educational needs of the child can be met; the negative criticism expected to be leveled at such an action is that the "State" is allowed to intrude into a familial matter and place the child against the parent. (O'Donnell, 1977).

Consequently, several distinctions must be made and procedures employed to protect both the rights of the parents as well as those of a handicapped child. For example, when a child is <u>voluntarily</u> placed outside the home in a foster care setting or public institution by the natural parents, precautions should be taken

to safeguard the constitutional rights of the natural parents and the educational rights of the handicapped child.

Yohalem (1979) maintains that even in a situation where the parents can be located, retain all the authority for the child's placement, and refuse to participate in the educational decision making process mandated by P.L. 94-142, a surrogate could be appointed provided that adequate notice has been made in a manner the parents can understand and if the parents are given the opportunity to participate in the process at any time they choose. A detailed approach for resolving the lack of parental involvement in such a situation is presented in the Mattie T. v. Holladay (1979) consent decree.

Mattie T. v. Holladay was filed on behalf of all school-aged children classified as handicapped in the state of Mississippi and the plaintiffs alledged the failure of the State Department of Education and seven local school districts to enforce the children's rights under P.L. 94-142. The consent decree settling this special educational case establishes a system of surrogate parents to represent children who do not have "available" parents.

The specific procedure regarding the participation of parents or surrogate parents in all stages of the special education process for children who have been voluntarily placed outside the home includes the following safeguards:

> For children who are living in an institution, group home or other residential facility but who have not been placed by a court in the legal custody of a public agency, the agency responsible for their residential care shall make and document at least three attempts to contact each child's parents (through such methods as letters, telephone calls and home visits) to inform them of the SPED Process, provide a copy of the Department's Parent Information Booklet (set forth in Appendix B of this Decree), and explain their role as advocate for their child. If these efforts fail to involve the child's parents in the SPED Process, or if the parents fail twice to attend IEP meetings set up at a place and time (including weekends) agreed upon by the parents and the agency, the agency shall appoint a surrogate parent for the child unless the child's parents object to the appointment in writing. The agency shall inform the parents in writing that the surrogate has been appointed solely for the purpose of representing

> the child in the SPED Process, that this has been done because of the importance of securing involvement of non-agency personnel in the SPED Process for institutionalized children, and that the parents retain the right to represent their child at any time they become involved in the SPED Process. (Mattie T. v. Holladay, (C.A. No. DC-57-31-S (N.D. Miss.) 1979, III, 12, (C)(iii))

The intent of such a procedure is clearly to provide a child with a competent advocate to protect his/her best interests in the educational decision making process. Unless the child's parents object in writing to the appointment of a surrogate, the child will be represented by a trained surrogate in the identification, evaluation and placement decisions. The parents, nevertheless, retain the right to represent their child at any time they become involved in the educational process. Such an approach appears to safeguard both the rights of the parents and those of the child.

The policy of the State of Florida is to approach with caution the assignment of a surrogate when the parent is "unavailable." If a parent refuses to grant consent for evaluation or for placement, the local district has the right to request a due process hearing. State procedures would require the agency involved in serving the handicapped child to demonstrate to the appropriate court that there was no one available who could act on the child's behalf. This procedure protects the child in two ways: first, if there were no one who could act for the child's total care, the court would assign a guardian; second, if the agency were unable to demonstrate that there was no one to act for the child, the court process would prevent the agency from assigning a surrogate to bypass a decision of the parent with which the agency disagreed (FL, APP, 1979).

One of the most frequently cited components of P.L. 94-142 is the precise structuring of the procedural safeguards provided to insure that all decisions regarding the education of handicapped children occur in a rational and fair manner (Weintraub, 1978). Policy makers should be aware of the due process provisions of P.L. 94-142, especially those which relate to parental consent. The

federal regulations provide that where state law requires parental consent before a handicapped child is evaluated or initially provided special education and related services, state procedures governing the override of a parent's refusal to consent must be observed (§121a.504(2)(c)).

Where there is no state law requiring consent before a handicapped child is evaluated or initially provided special education and related services, the public agency may use the hearing procedures of P.L. 94-142 to determine if the educational decision making process can be initiated without parental consent (§121a.504(2)(i)). Another possible option within the context of the impartial hearing procedure would be to determine whether a surrogate parent should be appointed in such a situation. While safeguarding the right of the natural parents, such a procedure would also enable the handicapped child to have the benefit of an educational advocate acting to protect his/her interests. If the "unavailable" natural parents choose at a later date to become involved in the educational decision making process, the surrogate parent's role ceases.

Parents or Guardian "Not Known"

Another potential population of children in need of a surrogate parent are those whose parents or guardian are "not known". Since neither P.L. 94-142 nor its regulations specially define the term, several states have formulated their own definitions to facilitate implementation procedures.

For example, the Maryland State Board of Education has developed guidelines in accordance with P.L. 94-142 and Article 77 Section 106D-1 of the Public School Laws of Maryland to implement the surrogate parent concept. Statutory language defines that "Unknown means not known and not ascertainable by reasonable diligence or after reasonable inquiry and efforts to locate" (Art. 77, §106-1(7), Ann. Code Md. (Cu. Supp. 1977)). Alabama procedures require that in an effort to determine whether or not the parents or guardian are in fact unknown, the local

education agency must send a notice of the need for a surrogate to the adult in charge of the child's place of residence and to the parents or guardian at their last known address. Similarly, the State of Florida maintains that "unknown means that, after several attempts, the agency is unable to locate or determine a person who could act on behalf of the child as a parent is defined in the federal regulations." (FL, APP, 1979). These definitions and procedures are typical of other practices used by various states to equate parents who are "not known" with those who are not able to be located after reasonable inquiry.

Presumably, such parents have left their child in the care of others and cannot be identified. In such a situation, an educational agency must document all efforts to contact a handicapped child's natural parents or last known guardian. After reasonable inquiry, a decision can be made that the parents or guardian are "not known." A surrogate parent should then be appointed solely to safeguard the educational interests of the child.

The need for a surrogate parent in such situations is lessened if the person with whom the child lives acts as a parent. Given the regulatory definition of "parent" as "a parent, a guardian, a person acting as a parent of a child" (such as a grandparent, step-parent with whom a child lives, as well as persons who are legally responsible for a child's welfare) (§121a.10) there may be no need to appoint a surrogate. However, when such individuals have no desire or are unable to become involved in the decision making, long-term educational process, a qualified surrogate should be appointed. Only then would unrepresented handicapped children be assured of proper advocacy in educational decisions that have such a profound impact upon their future opportunities for education, employment and independent living.

Policy makers and decision makers should not presume that those adults who have custody or care of a child in a formal or informal situation are the best

candidates for appointment as a surrogate parent. It may well be the case that they are unqualified or lack the conviction necessary to participate in such a capacity in the educational decision making process (O'Donnell, 1977). However, it could be that a non-parent, such as a grandparent or older sibling in an extended family situation, is in fact qualified and therefore is the preferred candidate for appointment as the child's surrogate parent. Proper legal status is important in such a situation because the lack of such a status may impede access to pertinent student records, since these rights of access are limited to parents legal guardians, and surrogate parents (Bersoff, 1978).

Implications for Policy Makers

With the involvement of the courts and increasing federal legislation influencing educational practice, it becomes imperative that school boards, administrators and other educational policy makers act in a coherent fashion to implement such decrees and mandates. While basic litigation and legislation may have been necessary in the past, new challenges now face the educational community. At present there is a need to develop policies relating to the distribution of resources and the implementation of programs to meet the provisions of P.L. 94-142 (Higgins and Barresi, 1979). Because of the complexity and controvery surrounding some educational issues, such as the appointment of a surrogate parent, policy makers are frequently hesitant to formulate clearly defined policies. This lack of policy needs to be remedied.

Procedures, too, need to be developed to implement effectively the surrogate mandates, since they detail the what, who, when, and how of policy (Sage, 1977). If policies and procedures are developed by policy makers to implement the provisions of P.L. 94-142 and Section 504 in a rational and nondiscriminatory way, many issues currently impacting on both regular and special education programs and identified in this policy options paper can be resolved in a cooperative and

comprehensive manner by the various agencies delivering educationally related services to children.

Several options could be considered by educational agencies for systematically determining whether a child needs a surrogate parent. For example, a cencus of all children presently identified as handicapped could be conducted to determine if each of them has a parent who is known and available or to determine if they are wards of the state (Bersoff, 1979). Moreover, as a child find process identifies children possibly in need of special education and related services, surrogates could be appointed, when appropriate. A foster parent could be appointed as a surrogate if qualified and properly trained. Public agencies could utilize referral procedures, generally initiated by teachers and other professionals involved with the education and treatment of children with special needs, to determine if a child needs a surrogate. Interagency cooperation in these and similar efforts would help identify the population of children in need of a surrogate parent.

When clearly written policies and procedures govern such activities, the primary positive result is that a child receives proper representation during the educational decision making process, including the provision of a free appropriate education. Secondarily, educational agencies insure proper implementation and compliance with P.L. 94-142 mandates through such efforts.

Concluding Observations

Based on the statutory and regulatory language of P.L. 94-142, the first section of this policy options paper has identified significant issues related to the population of children - those whose parents are "not known, unavailable, or the child is a ward of the state" - in need of a surrogate parent. This population of children needs qualified, independent adults to advocate on their behalf in all matters relating to the educational decision making process. The

research findings, alternate courses of action, and anticipated results of various alternatives presented in this first chapter should assist policy makers in formulating policies and procedures for identifying those children in need of a surrogate parent.

After determining that a child does in fact need a qualified surrogate, the question arises as to who should serve in such an advocacy role and the method through which (s)he can be appointed. This policy options paper will now focus attention on these issues and will present several alternatives for making such determinations.

Chapter II
THE APPOINTMENT OF A SURROGATE PARENT: LEGAL ISSUES AND EDUCATIONAL CONSIDERATIONS

American jurisprudence has historically sought to protect the rights of children through guardianship laws. Guardianship establishes a legal relationship which authorizes one individual to become a decision maker for another (ABA, 1979). Traditionally, the primary responsibility of protecting the best interests of a child lies with the natural parents (United Nations General Assembly Resolution, Principle 7, 1959). Natural or adoptive parents are recognized by law as a child's natural guardian. Whenever a natural guardian is unable or unwilling to assume responsibility for a minor's person or property, a legal guardian may be appointed through a judicial process. Thus, until the legal status of majority is reached, a child is protected and cared for by either a natural or legal guardian. Under normal circumstances, the legal status of majority is reached at an age varying from 18 to 21 in different states.

Options for Appointing Surrogate Parents

The basic distinction between a guardian and a surrogate is one of legal status: a surrogate parent is not a student's legal guardian. Research indicates that this lack of legal status is perceived to be one of the major barriers to the implementation of the surrogate concept. Until policy makers address this issue, the possibility remains that a child in need of a surrogate will be denied proper representation in the educational decision making process.

After determining that a child is in need of a surrogate parent, a public agency must establish a method for assigning a qualified surrogate. Regulations for P.L. 94-142 provide that a public agency may select a surrogate parent in any way permitted under state law (§121a.514(c)(1)). Since few states to date have passed legislation for the appointment of a surrogate, implementation activities have faltered on state and local levels. Closely related to the issue of the

legality of a surrogate appointment is the question of the liability incurred by an adult engaged in the educational decision making process for a child. By providing the surrogate parent with a clear status and authority to act by state statute, regulation, or other comparable documents and by developing a surrogate parent system characterized by established procedures, defined roles, high quality training and regular supervision, the potential for liability of a surrogate parent can be minimized (Kotin, 1979).

At least three policy options exist to appoint a surrogate parent in accordance with the mandates of P.L. 94-142. These options include:

A. Passage of a State Surrogate Parent Statute.

B. Appointment of a Surrogate Through Existing State Guardianship Laws.

C. Appointment of Surrogate Parents by the State Education Agency or Local Educational Agency.

All three methods deserve serious consideration since there clearly are ramifications that policy makers should be aware of in establishing a method for assigning a qualified surrogate. Regardless of the option ultimately selected for the appointment of a surrogate parent, these basic policies should be included when formulating policies on state and local levels:

1.1 When a child's parents or guardian are not known or unavailable or when the child is a ward of the state, a qualified adult, not an employee of the State or local agency involved in the education or care of the child, shall be assigned to act as a surrogate parent.

1.2 A surrogate parent shall safeguard a child's rights in all matters relating to the educational decision making process, including the identification, evaluation and placement of a handicapped child.

1.3 The surrogate parent shall act as an advocate for the child to assure that (s)he receives a free appropriate public education in the least restrictive environment.

In the following discussion, selected legal and educational issues, based on research findings, will be addressed so that the positive as well as the negative factors of each option will become apparent.

PASSAGE OF A STATE SURROGATE PARENT STATUTE

A few states such as Connecticut have model statutes for implementing the surrogate parent mandates of P.L. 94-142:

> §10-94g(a) when in the option of the secretary of the state board of education or his designee, a child, as defined in section 10-76a of the general statutes, as amended by section 60 of public act 75-567, may require special education and the parent or guardian of such child is unknown or unavailable or such child is a ward of the state, the secretary or his designee may petition the juvenile court in the district wherein such child resides for the appointment of a surrogate parent who shall represent such child in the educational decision making process...
>
> §10-94h Upon a finding by the juvenile court that the child on whose behalf a petition was filed pursuant to section 10-94g meets the criteria for the appointment of a surrogate parent, such court shall appoint a surrogate parent for such child who shall be the proposed surrogate parent named in the petition or, if the court determines that such proposed person shall not be the surrogate parent, another person recommended by the secretary of the state board of education, upon the request of the court to make another recommendation, and agreed upon by the court...

State Statute Option 1: Court Appointment

It is interesting to note that in Connecticut a surrogate parent is appointed by a juvenile court upon the recommendation of the secretary of the state board of education to serve as a child's advocate in the educational decision making process. Before a surrogate is appointed, the juvenile court issues a summons requiring the parents or guardian of the child to appear in court for a hearing. Such a procedure protects the rights of the natural parents or guardian. Only after a finding by the court that a child meets the criteria for the appointment of a surrogate is such an appointment made.

The surrogate parent appointed has the same right of access as the natural parents or guardian to all the child's records, including, but not limited to, educational, medical, psychological and welfare records. No surrogate parent is liable to the child entrusted to him or the child's parents or guardian for any civil damages which result from acts or omissions which constitute ordinary negligence. This immunity, however, does not apply to acts or omissions constituting gross, wilful or wanton negligence (Connecticut Statute §10-94i).

Each procedure in this Connecticut model leading to a surrogate's appointment by the juvenile court takes place within a defined timetable:

Cumulative Time	Maximum Time for Each Step	
	10 days	Nomination of a child -- written request to agency Agency receives request -- send copies to SEA, State Advisory Council and appropriate officer Agency investigates
10 days		Unable to locate parent -- parent located, request is terminated
	30 days	Agency requests SEA to review the case Evidence is weighed -- if child meets the criteria
40 days		
	5 days	Surrogate parent assigned (recommendation) Appointment requested from juvenile court
45 days		
	45 days	Surrogate parent appointed by juvenile court
90 days		

(Connecticut State Department of Education, Surrogate Parents Training Program, Facilitator's Manual, p. 34).

State Statute Option 2: State Board of Education Appointment

Another option within the statutory approach for the appointment of a surrogate is the model used in the State of Maryland. The responsibility for the appointment is given to the State Board of Education, rather than to the juvenile or family court.

> Upon the filing of a request for the appointment of a parent surrogate after a determination that the parent or legal guardian is unknown or unavailable and that the proposed parent surrogate is neither an employee

> nor an agent of the State Board or the local board involved in the education of the child and is otherwise properly qualified to serve as an advocate for the child. If the State Board finds that the proposed parent surrogate is not qualified to serve, it shall request that the local board make another nomination, or it may select and appoint one itself...
>
> (Art. 77§106D-1(8)(d), Ann. Code Md., 1977)

The Maryland statute provides that any person, including a local superintendent of schools, may request the assignment of a surrogate for a child who may need special education if the child is a ward of the State, or if the child's parent or guardian are unknown or unavailable. The request is made in writing to the State Board. If after investigation by the Board it is determined that the child needs a surrogate, a qualified adult is appointed as an advocate for the child. Any person aggrieved by a decision of the State Board with regard to the selection and appointment of a surrogate parent may seek review of the decision in a court of competent jurisdiction.

Surrogate Parent Guidelines, issued by the Maryland State Department of Education, Division of Special Education, stipulate that surrogate parents shall be appointed to serve until one or more of the following occurs (IV):

- The child's natural parents are available.
- The child's natural parents are known.
- The child completes the public school.
- The child reaches the age of 21.

Persons appointed by the State Board as surrogate parents may be terminated upon recommendation from the County Superintendent or designee to the State Board when documented evidence indicates imcompetence, breach of fiduciary duties, conflict of interest, or similar violations of responsibility. Under such circumstances, there is no requirement for a hearing.

Other states with statutory authority given to the State Education Agency or an appropriate educational bureau within the SEA to appoint surrogate parents

include Illinois, Kentucky, Louisiana, Ohio, and Oregon. The FY 1979 Wisconsin Annual Program Plan indicates that pending the enactment of proposed amendments to provide statutory authority, rules in the Wisconsin Administrative Code will be promulgated to cover qualification, assignment, and general procedures for surrogate parents.

State Statute Option 3: Department of Human Resources Appointment

A variation of the option of SEA responsibility for the appointment of a surrogate parent under state statute is to extend this authority to other agencies, such as the Department of Human Resources. For example, the State of North Carolina in Chapter 1293 delegates both the State Board of Education and the Department of Human Resources to insure that the rights of a child, birth to the age of majority, are protected when the parents of the child are not known, unavailable, or the child is a ward of the state, including assignment of an individual to act as a surrogate.

In North Carolina, the State Superintendent of Public Instruction and the Secretary of Human Resources recruit, train and maintain a registry of eligible people to act as surrogate parents. Local education agencies, the Council on Educational Services for Exceptional Children and the Advocacy Council for the Developmentally Disabled and Mentally Ill may make recommendations to the Superintendent and the Secretary of potentially eligible people to act as surrogate parents.

North Carolina procedures for determining when a child needs a surrogate parent specify that an employee of the Department of Public Instruction, Department of Human Resources, other State agencies, residential school or hospital, any physician, any judicial officer, any other person whose work involves education or treatment of children who knows of a child possibly needing special

education services should file a request for assignment and send a copy of the request to the Secretary of Human Resources and to the Superintendent of Public Instruction.

When a child is identified as in need of a surrogate, the Superintendent of Public Instruction or the Secretary of Human Resources makes the assignment of the surrogate parent to the child dependent upon whether it is a public instruction matter or a human resources matter.

Positive Effects Related to the Passage of a State Surrogate Parent Statute

Regardless of the variations in the three policy options listed above, the passage of a state statute providing for the appointment of a surrogate has these among other positive advantages for policy makers, including legislators to consider:

- A surrogate parent is given legal status.
- The rights of the natural parents as well as those of the child are protected.
- The child is assured of proper representation in the educational decision making process.
- Appointment procedures can be defined and areas of accountability specified.
- The qualifications of a surrogate and training programs can be regulated.
- The issue of liability can be addressed, assuring the surrogate of proper protection under the law.

Given the complexity of the issues involved, policy makers should weigh heavily these advantages when establishing a method for assigning a qualified surrogate. However, it should be emphasized that the passage of any legislation

is usually a time consuming and very demanding task. Appointment of a surrogate could also be accomplished through regulation, providing there is existing statutory authority to issue the regulation. Other documents with the force of law, such as an executive order, would also be acceptable (Kotin, 1979). Policy makers should consider two other options; namely, appointment of a surrogate through existing state guardianship laws and through an informal appointment by the State Education Agency or Local Educational Agency.

APPOINTMENT OF A SURROGATE THROUGH EXISTING STATE GUARDIANSHIP LAWS

The legal basis and dominant social philosophy for guardianship laws in the United States is the doctrine of parens patriae - the state serving as the benevolent parent caring for needy children and protecting their best interests (ABA, 1979). All states have guardianship and conservatorship laws to protect minors who are dependent, abandoned, neglected and/or abused. Through the mechanism of existing state guardianship laws, several states have sought to comply with the surrogate mandates of P.L. 94-142.

As indicated earlier, a surrogate parent is not a student's legal guardian. The surrogate parent concept, as designed in P.L. 94-142, is intended only to assure appropriate decision making in regard to a student's right to an appropriate educational opportunity. Other non-educational matters pertinent to that student would be the responsibility of a court-appointed guardian. Research indicates that this distinction is often disregarded in policy formulation and consequently difficult to implement in actual practice. The 1979 Annual Program Plans of several states reflect the position articulated in the State of Washington's Plan; namely, that a surrogate parent has no legal status unless he or she becomes the court appointed guardian of an individual. Once such a guardianship appointment is made, the responsibilities for decision making on behalf of the minor extend beyond the educational areas.

State Guardianship Laws: Various Interpretations and Practices

Under P.L. 94-142 provisions, a surrogate may be appointed in any way permitted under state law (§121a.154(c)(1)). This results in various approaches to appoint surrogates within existing guardianship laws on state and local levels. The following outline of some of these state practices will enable policy makers to become familiar with various options employed throughout the country to implement the surrogate parent concept.

Where a child's parents or guardian are unknown, are unavailable, or the child is a ward of the state, each child in Iowa is assigned a surrogate in accordance with the provisions of the Code of Iowa governing guardianship appointment. If in the opinion of the court it would be conducive to the welfare of a child to place him/her under guardianship, such an appointment is made. Such an appointment establishes a legal relationship between the guardian and the minor.

Guardianship proceedings remain under the jurisdiction of the court. The court may at any time with cause terminate such a relationship, remove the guardian and appoint a new guardian, or order a commitment to an appropriate institution or hospital-school (§222.31 and 222.34). A guardian appointed under Chapter 222 of the Iowa Code has the same power over the person as possessed by a parent over a minor child (§222.33).

Procedures for petitioning the court to appoint a surrogate parent in the State of Hawaii are based on the State's Attorney General's opinion of existing state statutes. The Hawaii Revised Statute §571-2(10) defines the role of the guardian as:

> "'Guardianship of the person of a minor' means the duty and authority to make important decisions in matters having a permanent effect on the life and development of the minor and to be concerned about his general welfare."

Under such guardianship statutes, the Attorney General's opinion maintains that a person could be appointed to assume broader responsibilities for the

child than those duties related to the educational decision making process. Nothing precludes the Family Court, however, from appointing a guardian for the limited purpose of representing a child's best interest in identification, evaluation, and educational placement, including the provision of a free appropriate public education (Department of Attorney General, 1977).

Policy Option 1: Guardian Ad Litem

Broadly defined, a guardian ad litem is a person appointed by a court to defend a minor in any suit to which (s)he may be a party (Mackay, 1957). Several states provide for the appointment of a surrogate based on a state's guardianship statute. For example, Minnesota statutes provide for the appointment of a surrogate parent (M.S. 120.17(3a)(e). When a child is a ward of the commissioner of public welfare, when the parent or guardian is unknown or unavailable or when parental rights have been terminated, a school district insures that the rights of the child to a free and appropriate education are protected by contracting the local county welfare department and requesting that the public welfare system intervene on behalf of the child. The district suggests to the local county welfare system that a contact with the county attorney's office be made to determine whether a guardian ad litem should be appointed.

The State of Missouri has no statutory provisions for the assignment of surrogate parents. The only provision available under state law for the assignment of guardians is by a court of competent jurisdiction (MI, APP, 1978). Since there is no legal provision for a surrogate parent currently available in Colorado, the guardian ad litem provided under Colorado statute is designed to protect the interests of the child (CO, APP, 1979). The court may appoint such a guardian to protect the interests of a child when (a) no parent, guardian, legal custodian, or relative of the child appears at the first or any subsuquent hearing, (b) when the court finds that it is in the child's interest between the

child and his parent, guardian, or legal custodian, or (c) the court finds that it is in the child's interest and necessary for his welfare, whether or not a parent, guardian, or other legal custodian is present (C.R.S. 1977, 19-3-105).

Policy Option 2: Limited Guardianship

Somewhat different procedures are employed in the State of Texas. To comply with the mandates of P.L. 94-142, the Texas Education Agency coordinates with the Texas Department of Human Resources for the provision of a surrogate parent. The Department of Human Resources' authority is based upon state statutes as codified in the Texas Family Code and the Texas Probate Code. Both Codes set forth temporary procedures for addressing the needs of a minor. The actual assignment of surrogate parents for all state agencies is also coordinated through the Texas Department of Human Resources.

grant legal status to a person responsible for making some decisions on behalf of another, five states (Kentucky, Maine, Illinois, New York and Ohio) during the past year have revised their statutes and passed limited guardianship laws (NASMRPD, 1979). A limited or special guardian is one appointed by a court for a particular purpose and may be appointed regardless of whether there is a general guardian already assigned (Mackay, 1957).

An appointment as a limited guardian appears to include the scope of surrogate responsibilities as outlined in P.L. 94-142. However, while statutes concerning guardianship for minors often parallel those of adults, there remain significant differences. One such difference is that only the States of Ohio and Washington provide explicitly for the limited guardianship for minors (ABA, 1979).

Implications for Policy Makers

The varied practices, based on existing state guardianship laws as outlined above, indicate the need to distinguish in policy a surrogate parent appointed

solely to safeguard a child's rights in the specific instance of educational decision making from a legal guardian who is charged with the total welfare of the child. When a guardian is appointed through a legal process, that person assumes responsibilities to protect the child's person or property or both. Included within these responsibilities would be the duties described in the surrogate parent mandates of P.L. 94-142.

The limited guardianship approach could be one option for granting legal status to a qualified adult to assist solely in the identification, evaluation, and placement processes for handicapped children. This option, however, would necessitate revision in almost all state guardianship statutes since only two states have limited guardianship laws for minors. If such an option is chosen, policy makers could address liability issues and protect the guardian under law. No guardian so appointed would be liable to the child or the parents for any civil damages unless the guardian's actions or omissions constituted gross, willful, or wanton negligence.

In addition to deciding on a method for determining whether a child needs a surrogate parent, policy makers should be aware of potential issues regarding the specific time at which a surrogate should be assigned when a child is in need of such an advocate. Federal statutory language is silent on this point; regulatory language is permissive: "The surrogate parent may represent the child in all matters relating to (1) The identification, evaluation, and educational placement of the child, and (2) The provision of a free appropriate public education to the child" (§121a.514(e)).

A surrogate parent should be assigned when a child is first identified as possibly possessing a handicapping condition, not after school personnel decide that the child is probably handicapped and the child is referred for evaluation (Gater, 1979). Some states appoint a surrogate only after an evaluation of a

child reveals that special education and related services are needed. Policy makers should be mindful that any failure to appoint a surrogate early in the educational decision making process prevents the child from having proper representation and violates the child's educational rights.

An additional option for appointing surrogate parents should be considered by policy makers, namely, appointment by the state or local educational agencies.

APPOINTMENT OF SURROGATE PARENTS BY THE STATE EDUCATION AGENCY OR LOCAL EDUCATION AGENCY

An analysis of States' 1979 Annual Program Plans indicate that several states employ informal procedures for appointing surrogate parents to comply with the surrogate provision of P.L. 94-142. While such a method has the advantage of providing needed representation for a child whose parents are not known or unavailable or for children who are wards of the state, concerns were expressed as to the legality of the appointment, the need for accountability procedures, and the issue of the extent of liability.

To achieve appointment by the SEA or LEA, States such as Alabama and New Hampshire use variations of a model originally developed by Abeson, Bolick and Hass (1976). With enactment by the United States Congress of the Education Amendments of 1974 (P.L. 93-380), all state education agencies were required to adopt a state plan that would include provision of adequate procedural safeguards in educational decision making. Included within these provisions was the surrogate parent concept. The procedures set forth in the following model involve state and local education agency personnel in the development and operation of a system to provide every child with adequate representation during education decision making activities:

- If there is reason to suspect that a child is in need of a surrogate parent, the local education agency must make written inquiry to the adult in charge of the child's place of residence, as well as to the parents or guardian at their last known address.

- If efforts indicate that the parents or guardian are unavailable, a request for the appointment of a surrogate is filed by school personnel or other interested parties with the child's local education agency.

- After a local education agency receives a request for the assignment of a surrogate, it should in turn request the state education agency to determine if the child is in need of a surrogate.

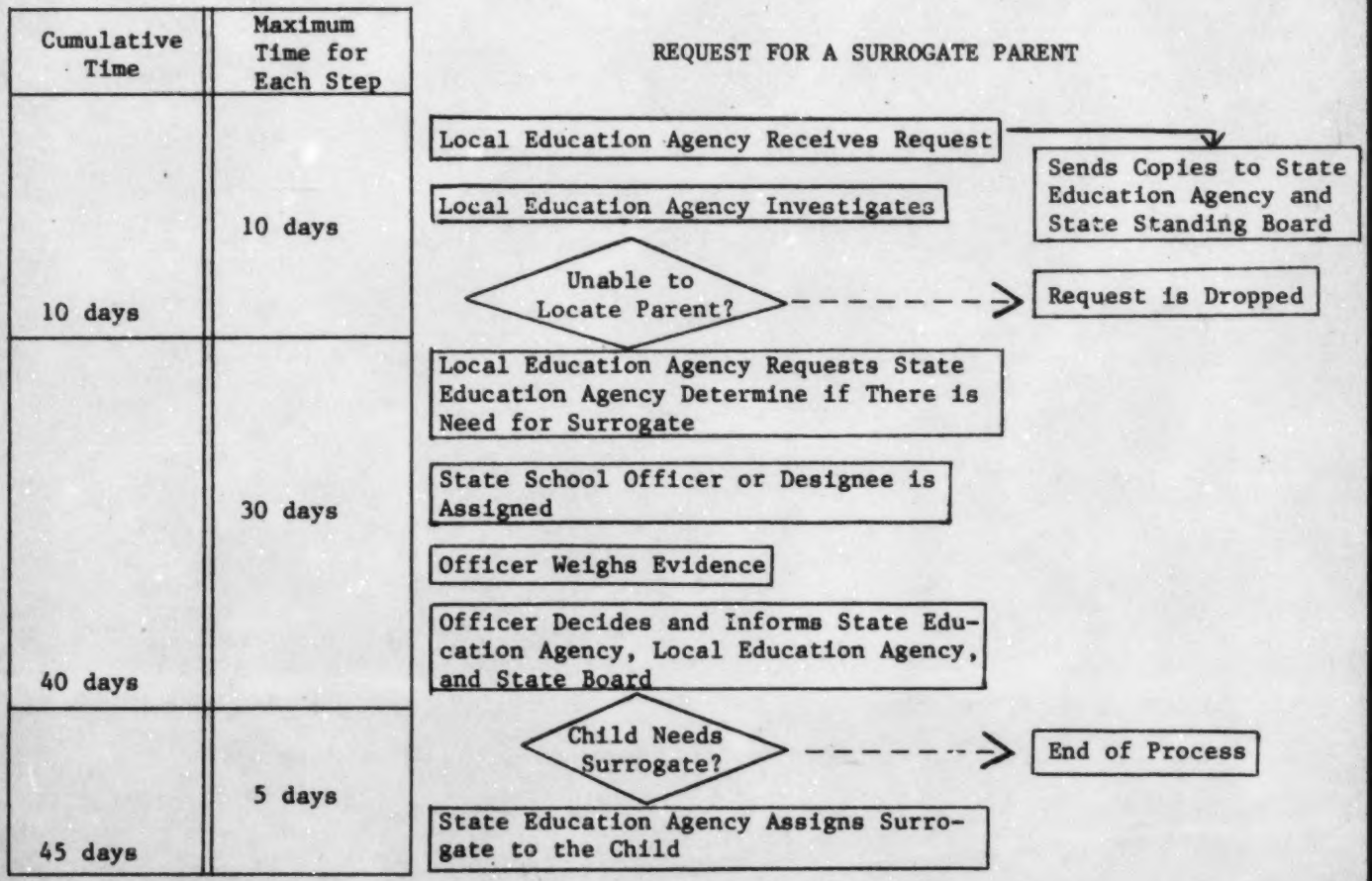
- Impartial officers weigh evidence and make a determination. This determination of need must be accomplished within 30 days of the local agency's request.

- If the recommendation is that the child is in need of a surrogate, the state education agency must assign one to the child within five days after receiving notice.

- Once the assignment is made, the surrogate will be responsible for representing the child, just as the parents or guardian would, through the complete decision making process.

(Abeson et.al. 1976, pp. 39-40).

This option for assigning a surrogate within particular timelines can be seen in the following schema:


Cumulative Time
Maximum Time for Each Step
REQUEST FOR A SURROGATE PARENT
Local Education Agency Receives Request
Sends Copies to State Education Agency and State Standing Board
Local Education Agency Investigates
10 days
Unable to Locate Parent?
Request is Dropped
10 days
Local Education Agency Requests State Education Agency Determine if There is Need for Surrogate
State School Officer or Designee is Assigned
30 days
Officer Weighs Evidence
Officer Decides and Informs State Education Agency, Local Education Agency, and State Board
40 days
Child Needs Surrogate?
End of Process
5 days
State Education Agency Assigns Surrogate to the Child
45 days

It may not be possible or desirable for all public educational systems that serve handicapped children to adopt all these procedures. However, variations of these procedures can be seen in several states' 1979 Annual Program Plans. For example, the assignment of a surrogate parent to a particular child is the responsibility of the local school district in these among other states--Tennessee, Wyoming, and Georgia--and is made by the intermediate educational unit in the State of Pennsylvania. In the State of Arkansas, the local school district may select and appoint its own surrogate parent so long as the individual meets the criteria set forth by the state educational agency.

Due to the complex legal and educational issues involved, a state may wish to adopt a more formal legislative process for implementing a surrogate parent program. Nevertheless, the informal method of appointment clearly comports with the intent of P.L. 94-142 (Bersoff, 1979).

Termination of Assignment of a Surrogate Parent

A request for a change or termination of assignment of a surrogate parent could be made by the child, the surrogate, or the educational agency involved. Such a request should be made in writing and submitted to the state educational agency. Supportive documentation or other relevant evidence for such action should be included in cases where a party other than the surrogate parent has requested the change or termination of the assignment. The State Superintendent of Education or his/her designee should determine whether or not a change in or termination of assignment is warranted.

The State of Oregon terminates the assignment of a surrogate parent when one or more of the following circumstances occurs: (a) The child reaches the age of majority (except those who are of the age of majority but who are determined to be legally dependent and subject to a guardianship); (b) The child is found to be no longer eligible for special education services (except when termination of

special education services is being contested); (c) Legal guardianship responsibility for the child is transferred to a person who is able to carry out the role of the parent; (d) A parent, who was previously unknown or unavailable, is now known or available; or (e) The appointed surrogate is no longer eligible (OR, APP, 1979).

When a surrogate parent is threatened with dismissal because of a charge of misconduct or incompetence, the surrogate should be entitled to a hearing and other due process procedures. Such an approach to this situation would prevent arbitrary and caprious decisions from being made that would be detrimental both to the surrogate's reputation and the child's best interests.

Concluding Observations

The positive and negative effects of each option presented above should help policy makers determine which method for appointing a surrogate parent best meets state and local needs. Clearly written policies and procedures assure that a qualified individual will be appointed to provide proper representation for a child in need of a surrogate parent during the educational decision making process. The method decided upon for appointment will depend on existing state laws and child care systems. When these are found to be inappropriate for implementing the surrogate mandates, the passage of new legislation and the development of new mechanisms to insure the integration of advocacy to protect the interests of the handicapped child may be necessary.

Closely related to the appointment of a surrogate parent are the issues to be addressed in the following chapter, namely, surrogate rights, selection, training, and compensation.

Chapter III
SURROGATE RIGHTS, SELECTION, TRAINING AND COMPENSATION

The purpose of the third chapter of this paper is to present policy options based on current state practices relating to surrogate rights, selection and training programs, and compensation alternatives. Such an approach will enable policy makers to give experiential consideration to options for implementing P.L. 94-142 surrogate mandates. Since federal policy in these areas is minimal, persons charged with implementation should establish criteria for decision making and develop policies according to particular needs on state and local levels.

For example, P.L. 94-142 regulations provide only two general criteria for the selection of a surrogate parent, namely, that the person selected (1) has no interest that conflicts with the child he or she represents; and (2) has the knowledge and skills that insure adequate representation of the child (§121a.514 (c)(2)(i)(ii)). If these provisions were more specific, they would be inflexible to the experience, knowledge and values of individual policy makers on state and local levels (Morra, 1978). Those formulating policies and procedures on these levels should benefit from the research findings and policy options presented below.

Policy Area 1: Surrogate Rights and Levels of Parental Involvement

The rights of a surrogate parent of a handicapped child are contingent upon the development of policies regarding active parental involvement in the educational decision making process. A policy of parent-school collaboration in four areas is essential: (1) at the level of identification, (2) at the level of evaluation, (3) at the level of placement, and (4) at the level of providing a free appropriate public education for each handicapped child, including the development of an individualized education program (IEP) prior to placement. Unless policy makers make a strong concerted effort to formally

adopt parental involvement policies and procedures, such collaborative efforts will probably only be given minimal attention (Sage, 1977). The establishment of such policies governing parental involvement in the decision making process is the rationale upon which similar involvement of surrogate parents is based. Surrogates enjoy the same rights throughout the educational decision making process, including access to records, as do natural parents. Therefore, policy statements regarding surrogate parents should articulate the following rights:

- To prior notice whenever a school district proposes to initiate or change the educational program for the child.
- To challenge the accuracy of information in the child's record.
- To participate fully in the planning of the child's individualized education program.
- To question the appropriateness of the child's educational program and placement.
- To all procedural safeguards, including the right to present evidence, confront, cross-examine, and compel the attendance of witnesses.
- To full knowledge about special education programs for the child.

Policy Area 2: Selection of Surrogate Parents

Research findings indicate that almost all 1979 Annual Program Plans submitted to the Bureau of Education for the Handicapped include among the criteria for the selection of a surrogate the provision that the person appointed have no interest that conflicts with the child (s)he represents. Consequently, the person assigned as a surrogate may not be an employee of a public agency which is involved in the education or care of the child (§121a.514(d)(1)). Differences in state plans can be seen in policies relating to the knowledge and skills necessary to insure that a surrogate adequately represents the child in the educational decision making process (§121a.514(c)(2)(ii)). In addition to formulating policies based on the above regulatory requirements, policy makers should consider several options when determining the qualifications of a surrogate.

States such as Alabama, Utah, and Illinois include among the qualifications of surrogate parents that, when possible, they be of the same racial, cultural and linguistic background as the children they represent. The States of Maryland, Vermont, Connecticut, and Louisiana, among others, require participation in a training program as a prerequisite for selection as a surrogate. The North Carolina 1979 Annual Program Plan states that two factors may be considered, but are not mandatory, when selecting a surrogate: (1) that the person appointed be a relative of the child or (2) be of the same race as the child.

Typical of several states' qualifications are those stipulated by the Vermont Surrogate Parent Program:

> A person recruited as a surrogate parent shall have demonstrated the following qualifications.
>
> (1) Shall be an adult and a legal citizen of the United States.
>
> (2) Shall not be an employee of the State Educational Agency, Local Educational Agency, institution, or private school involved in the education of the child.
>
> (3) Shall have no vested interest that conflicts with the child's educational interests.
>
> (4) Shall be committed to the child's educational interest.
>
> (5) Shall reside in the same or reasonable limited geographic area as the child.
>
> (Thomas, Vermont Surrogate Parent Program, 1978).

In Kentucky, the State Department of Education and local school districts, in cooperation with other public and private agencies, recruit persons who can and will serve as surrogate parents. The Bureau of Education for Exceptional Children with the SEA maintains a registry of such persons to act in this capacity. Surrogates in New Hampshire are chosen from a list of people recommended by a state level, advisory board or committee charged with advising or working with the state regarding the education of handicapped children. This board or

committee is representative of persons concerned with the education of handicapped children, including consumers, parents, and teachers.

The State of New Jersey maintains a roster of volunteers in each County Superintendent's Office who have been appointed to act as surrogate parents. The existing rosters consist predominantly of Parent Advocate workshop participants who were asked to volunteer as part of the development of an advocacy/surrogate system for handicapped children in the state. The system in New Jersey is being provided jointly by the Bureau of Special Education and Pupil Personnel Services, the Department of the Public Advocate, and the Developmental Disabilities Council.

In the first comprehensive court order under P.L. 94-142, Mattie T. v. Holladay (1979), the court specified the State of Mississippi's responsibilities for selecting surrogate parents and listed criteria related to a person's qualifications to function in such a capacity. The court decreed that surrogate parents be drawn from associations of or for handicapped citizens, or from other voluntary organizations pursuant to a formal written procedure developed by each agency and set forth in an interagency agreement. Included among the criteria for matching a surrogate with a child are the potential surrogate's competency to advocate for the child, to become familiar with the child's needs, to get to know the child personally, be of the same race as the child, if possible, and vigorously represent the child at each stage of the special education process.

Another criterion to consider is to offer an opportunity to the child to participate in the selection of a surrogate and to reserve the right of the child to request a change of a surrogate. By establishing various criteria based on state and local need for the selection of surrogates, and by defining their role, policy makers can assure that the person appointed is qualified to represent the child in the educational decision making process. Additionally, such policies enable state and local officials to monitor the activities of a

surrogate and to take action to terminate an appointment if necessary. Through an annual review for all surrogate parents conducted by the State Education Agency, a decision regarding continued participation can be reached.

Policy Area 3: Training of Surrogate Parents

Effective involvement by a surrogate parent in the educational decision making process can only be achieved if (s)he possesses the knowledge and skills that insure adequate representation of the child (§121a.514(C)(2)(ii)). Moore and Mason (1978) indicate that procedures for "insuring" that a surrogate has adequate knowledge and skills vary widely from state to state. Some states do not train, rather they carefully screen candidates and select people who already have adequate backgrounds (Iowa); some states have a training program for candidates who want to be either a hearing officer or a surrogate parent (Illinois); other states run a training program planned specifically for surrogate parents (Connecticut, Massachusetts, Vermont, Louisiana). States with training programs frequently address the issues of state and federal laws, the nature of exceptionalities, special education programming, the rights and responsibilities of a surrogate parent, and due process procedures. Approximately 40 to 50 hours of instruction are included in their training programs.

The generic design of Connecticut's training program allows for the use of local policies and state laws, and includes objectives and suggested activities in five areas. Training program components also include instructional and media materials such as transparencies, filmstrips/cassettes, video tapes, readings and prepared worksheets to be used by the trainer and the participants. The Book of Readings, developed by Carey and Strauch (1978) for the Connecticut State Department of Education, contains articles to be used as preparatory and supplementary information for each workshop session.

Since the Connecticut training program is flexible and allows for adaptation, it could serve as a model for policy makers on state and local levels who are seeking to implement surrogate parent training programs. The Connecticut model is divided into five sections with clearly written objectives for each session:

Section 1, State Laws, identifies the main features and provisions of legislation providing for the education of handicapped children. Facilitator's objectives include:

- To define the concept of special education.
- To define the concept of exceptional children.
- To describe the identification and diagnostic process.
- To describe required programs and curriculum provisions.
- To define the state regulation for confidentiality of records, evaluation of programs, reimbursement procedures and parents' rights.

Section 2, Federal Law, focuses on mandated federal legislation regarding special education. Facilitator's objectives include:

- To provide an overview of P.L. 94-142 provisions.
- To understand the purpose of the law and the definitions.
- To be aware of the specific rights awarded to parent and child.
- To describe individual protections.
- To have a general understanding of the accountability factors.
- To define the due process provisions.
- To discuss the role of the parent in the due process procedure.

Section 3, Surrogate Parents, focuses on the responsibilities of a surrogate parent in representing a child in the educational decision making process. Facilitator's objectives include:

- To define the qualifications of a surrogate parent.
- To delineate the role and responsibilities of a surrogate parent.
- To define the protections and rights of a surrogate parent.
- To be aware of the selection and appointment procedures of an individual as a surrogate.
- To define clearly the procedure for the nomination of a child for a surrogate and the appointment of a surrogate parent to a child.
- To discuss the essential elements of knowledge and training needed as a surrogate.

Section 4, Exceptional Children and Programming, examines the various categories of exceptionality and educational programming options available within the schools. Facilitator's objectives include:

- To describe the classifications of special education students.
- To discuss the characteristics of exceptional children.
- To define the role of labels in program provisions for exceptional children within the state.
- To describe various instructional models that attempt to provide educational programming for exceptional children.
- To define the role and relationships of personnel within each model.

Section 5, State Due Process, focuses on procedural safeguards, mediation, hearing and appeal procedures within the state, and the role of the surrogate parent in this process. Facilitator's objectives include:

- To define the concept of due process.
- To define the due process provisions within the state.
- To describe the local planning and placement procedure for each exceptional child.
- To define the mediation process and its provisions for parent participation.
- To define the hearing and appeal procedures provided by the state law and the role of parents within this process.
- To delineate the role of the surrogate parent in the due process provisions within the state.

(Carey and Strauch, Facilitator's Manual, Connecticut Surrogate Parents Training Program, pp. 2-5)

Since the role of a surrogate is primarily one of advocacy on behalf of the educational rights of the child, it is of paramount importance that included among the trainers there be members of advocacy groups, educators, lawyers, legislators, and parents of handicapped children experienced in dealing with public bureaucracies in general and educational agencies in particular. If surrogates are to be effective in their role, they must be trained to use practical, workable strategies which achieve the ultimate goal of providing a free appropriate public education in the least restrictive environment for each handicapped child.

In their efforts to provide adequate training for surrogates, policy makers should consider the possibility of utilizing the protection and advocacy system initiated by the Developmentally Disabled Assistance and Bill of Rights Act of 1975 to protect the rights of disabled persons. This Act provides special protect grants and grants to university affiliated facilities to assist them

in operating demonstration facilities and interdisciplinary training programs for personnel serving developmentally disabled persons.

Training grants are also authorized under Title XX of the Social Security Act. These monies, available at a 75% federal match, may also be used for training surrogate parents, foster parents, and others who work with children with special needs. Title XX training funds are open-ended and do not have to be claimed under the $2.5 billion ceiling in the Title XX service programs. In FY 1977, $45.7 million was expended under the program, but figures on expenditures for child related training are not available (Knitzer, 1978).

Policy Area 4: Compensating Surrogate Parents

The regulations for P.L. 94-142 provide that a person who otherwise qualifies to be a surrogate parent is not an employee of a public agency solely because (s)he is paid by the agency to serve as a surrogate parent (§121a.514(d)(2)). An analysis of 1979 Annual Program Plans indicates that different methods are used by states to compensate surrogate parents for their efforts or to reimburse them for their expenses. For example, the Illinois Office of Education will pay a per diem stipend plus expenses such as travel, telephone, etc., to the surrogate/child advocate for his or her services. In Maryland, all surrogate parents are compensated in accordance with the County Board's policies relating to consultants or part-time employees of that system. Likewise, surrogates in Iowa are remunerated according to existing policies and procedures because they are appointed under existing law.

At least three policy options are possible relative to the issue of compensation: first, a qualified volunteer shall be appointed a surrogate and he/she shall personally bear all expenses incurred in functioning in such a capacity; second, a qualified volunteer shall be appointed as a surrogate and shall be reimbursed for actual costs incurred in serving in such a capacity; third, a qualified person shall be appointed as a surrogate and shall be remunerated on a salaried or per diem basis.

It seems only reasonable that a surrogate should be reimbursed for all ordinary expenses incurred in advocating on behalf of the educational needs of a child. Due to a strong desire to advocate on behalf of handicapped children, some persons will gratuitously volunteer their services. If policy makers determine that because of the required qualifications and responsibilities undertaken that a paid surrogate is preferable to a volunteer, several options for compensation can be considered:

- A flat hourly rate, with or without maximum limits.
- A per diem honorarium.
- A flat rate for each assignment.
- An annual salary or some modified variation, regardless of the number of children served.

Abeson et.al. (1976) caution that there should be a limit placed on the number of children a surrogate serves so that the quality of representation would be assured. This philosophical basis of protecting the rights of the child and advocating on behalf of the child's interests in decisions related to the identification, evaluation and placement needs to be reflected in all policies developed on state and local levels.

Concluding Observations

This policy options paper has attempted to offer guidance to policy makers as they seek to devise methods and establish criteria for determining whether a child needs a surrogate parent and for assigning a surrogate when appropriate. Principal legal issues have been cited and significant educational considerations have been identified in such a way as to assist decision makers in establishing a surrogate parent policy base.

Since policy development is an evolving process open to expansion and clarificiation, the research findings included within this paper have suggested options,

frequently based on current practices on state and local levels, for implementing the surrogate parent mandates of P.L. 94-142. A summary of the policy options included throughout this paper will be presented in Chapter IV.

Further interpretation and clarification of policy issues undoubtedly will occur in the future as implementation continues. Meanwhile, it is hoped that this policy options paper will enable policy makers to formulate policies and procedures that will result in qualified adults being appointed, when necessary, to safeguard a child's rights in the specific instance of educational decision making, including the identification, evaluation and placement of a handicapped child. With such proper representation and advocacy, handicapped children who are wards of the state, or whose parents are not known or unavailable, will receive the same benefit to which all children are entitled, namely, a free appropriate public education.

Chapter IV
BASIC POLICIES AND POLICY OPTIONS RELATING TO THE SURROGATE PARENT PROVISIONS OF P.L. 94-142

The final chapter of this policy options paper presents a compilation of the policy options included in each of the three previous chapters and outlines the basic surrogate parent policies required by P.L. 94-142 provisions. Such a format presents policy makers with options for establishing policies and procedures to implement surrogate parent mandates either within the framework of present state laws and existing systems, or through the passage of new legislation and the development of new mechanisms to insure the integration of advocacy in the educational decision making process.

I. IDENTIFYING THE POPULATION IN NEED OF A SURROGATE PARENT

Basic Policies

1.1 When a child's parents or guardian are not known or unavailable or when the child is a ward of the state, a qualified adult, not an employee of the State or local agency involved in the education or care of the child, shall be assigned to act as a surrogate parent.

1.2 A surrogate parent shall safeguard a child's rights in all matters relating to the educational decision making process, including the identification, evaluation and placement of a handicapped child.

1.3 The surrogate parent shall act as an advocate for the child to assure that (s)he receives a free appropriate public education in the least restrictive environment.

Policy Options

1.4 When a handicapped child's parents are not known and the child is living with a member of his/her extended family (older sibling, close relative, etc.), the state educational agency shall consider that member of the extended family for appointment as the child's educational surrogate.

1.5 Whenever the state educational agency has made adequate efforts to locate and involve the unavailable or absent parent in the educational decision making process, and provisions are made to guarantee the natural parent's constitutional rights, a surrogate parent shall be appointed to protect a handicapped child's right to a free appropriate public education.

1.6 Whenever a handicapped child has been placed by a court in the legal custody of a public agency and is living with foster parent, upon determination by the state education agency that the foster parent is qualified, (s)he shall be appointed and serve as the handicapped child's surrogate parent.

1.7 An educational agency shall document all efforts to contact a handicapped child's natural or adoptive parents or last known guardian prior to the appointment of a surrogate parent.

1.8 Whenever a child is voluntarily placed outside the home in a foster care setting or public institution by the natural parents, a surrogate parent shall be appointed provided that adequate notice has been made to the parents and contingent upon the right of the parents to participate in the educational decision making process at any time they so choose.

1.9 Whenever a parent does not cooperate or refuses to give consent to the evaluation of a child, the local educational agency shall have the right to request a due process hearing to determine if a surrogate parent should be appointed.

1.10 Whenever state special education statutes require parental consent prior to the evaluation of a child, but do not provide an override procedure, the public agency shall consider utilization of the state juvenile or family court procedures governing child neglect.

1.11 Each educational agency shall systematically determine whether a child needs a surrogate parent by conducting a census of all children presently identified as handicapped to ascertain if each of them has a parent who is known and available and to determine if they are wards of the state.

1.12 Public agencies involved with the education and treatment of children with special needs shall utilize referral procedures to determine if a child needs a surrogate.

II. THE APPOINTMENT OF A SURROGATE PARENT: LEGAL ISSUES AND EDUCATIONAL CONSIDERATIONS

Basic Policies

2.1 Each educational agency shall establish a method for appointing a surrogate parent for a handicapped child when appropriate in any way permitted under state law.

2.2 A qualified surrogate shall possess the knowledge and skills necessary to insure adequate representation of the child and have no interest that conflicts with the intent of the handicapped child.

2.3 No person shall be appointed as a surrogate if he/she is an employee of a public agency which is involved in the education or care of the handicapped child.

Policy Options

At least three policy options exist to appoint a surrogate parent in accordance with the mandates of P.L. 94-142. These options include:

A. Passage of a State Surrogate Parent Statute.

B. Appointment of a Surrogate Through Existing State Guardianship Laws.

C. Appointment of Surrogate Parents by the State Education Agency or Local Educational Agency.

2.4 Upon a finding by the juvenile court that a handicapped child meets the criteria for the appointment of a surrogate parent, the juvenile court in accordance with state statute shall appoint a qualified adult to function in such a capacity.

2.5 Upon a finding by the state education agency that a handicapped child is in need of a surrogate parent, the state education agency shall in accordance with state statute appoint a qualified adult to function in such a capacity.

2.6 Whenever a handicapped child is identified as in need of a surrogate parent, the Superintendent of Public Instruction or the Secretary of Human Resources shall in accordance with state statute appoint a qualified person to serve as the child's surrogate parent.

2.7 Whenever a handicapped child is identified as in need of a surrogate parent, a qualified person shall be appointed as a surrogate through the state's guardianship laws to protect minors.

2.8 Whenever a handicapped child is a ward of the state, when the parent or guardian is unknown or unavailable, or when parental rights have been terminated, a guardian ad litem shall be appointed by a court to protect the child's educational rights.

2.9 Whenever a handicapped child is a ward of the state, when the parent or guardian is unknown or unavailable, or when parental rights have been terminated, a limited guardian shall be appointed by a court to serve as the child's surrogate parent in the educational decision making process.

2.10 Whenever a handicapped child is identified as in need of a surrogate parent, the state educational agency shall appoint a qualified person to serve in such a role.

2.11 Whenever a handicapped child is identified as in need of a surrogate parent, the local educational agency shall appoint a qualified person to serve in such a role.

2.12 No surrogate parent properly appointed shall be liable to the child or the parents for any civil damages which result from acts or omissions which constitute ordinary negligence.

2.13 A surrogate parent's appointment shall not be terminated without just cause and in accordance with appropriate due process procedures.

III. SURROGATE RIGHTS, SELECTION, TRAINING, AND COMPENSATION

Basic Policies

3.1 A person selected to serve as a surrogate parent shall not be an employee of the state educational agency, local educational agency, institution, or private school involved in the education or care of the handicapped child.

3.2 A public agency shall insure that the person selected as a surrogate has no interest that conflicts with the interests of the child (s)he represents and has the knowledge and skills that insure adequate representation of the child.

3.3 A person shall not be regarded as an employee of a public agency solely because he or she is paid by the agency to serve as a surrogate parent.

3.4 A surrogate parent shall participate fully in the development of the handicapped child's individualized education program (IEP) and shall have the right to question the appropriateness of the child's educational placement.

3.5 A surrogate parent shall be entitled to the same procedural safeguards, including due process procedures, as natural parents.

Policy Options

3.6 A surrogate parent shall be selected from a list of people recommended as qualified by a state level advisory panel charged with advising the state education agency concerning the education of handicapped children.

3.7 A surrogate shall reside in the same or neighboring geographical area as the handicapped child.

3.8 A surrogate shall be selected from a roster of qualified persons consisting predominately of Parent Advocate workshop participants.

3.9 A surrogate shall be selected from associations of or for handicapped citizens, or from other voluntary organizations pursuant to a formal written procedure developed by each agency and set forth in an interagency agreement.

3.10 When selecting a surrogate parent, the state educational agency shall first consider, but not be limited to appointing a relative of the child.

3.11 When selecting a surrogate parent, the state educational agency shall consider, but not be limited to appointing a qualified person of the same racial, cultural and linguistic background as the handicapped child.

3.12 Whenever appropriate a handicapped child shall participate in the selection of his/her surrogate parent and shall have the right to request a change of a surrogate.

3.13 The state educational agency shall insure that each surrogate participate in a training program as a prerequisite for selection as a surrogate.

3.14 The state educational agency shall consider that included among the trainers of surrogate parents there be members of advocacy groups, educators, lawyers, legislators, and parents of handicapped children.

3.15 The state education agency shall insure that surrogate training programs include background information on pertinent state and federal laws, the nature of exceptionalities, special education programming, the rights and responsibilities of a surrogate parent, and procedural safeguards.

3.16 Whenever feasible the state educational agency shall consider utilizing the protection and advocacy system initiated by the Developmentally Disabled Assistance and Bill of Rights Act of 1975 to provide adequate training for surrogate parents.

3.17 Whenever feasible grants authorized under Title XX of the Social Security Act shall be used to train surrogate parents.

3.18 A qualified volunteer shall be appointed to act as a surrogate parent for a handicapped child and shall personally bear all expenses incurred in functioning in such a capacity.

3.19 A qualified volunteer shall be appointed to act as a surrogate parent for a handicapped child and shall be reimbursed for actual costs incurred in functioning in such a capacity.

3.20 A qualified person shall be appointed to act as a surrogate parent for a handicapped child and shall be paid on a salaried or per diem basis.

APPENDIX A

SURROGATE PARENTS:

STATUTORY AND REGULATORY LANGUAGE

APPENDIX A
SURROGATE PARENTS

Listed below are the pertinent sections of Public Law 94-142 and the Regulations for the implementation of The Education for All Handicapped Children Act of 1975 relating to Surrogate Parents. The exact language is included in this Appendix to facilitate easy reference while reading the analysis contained throughout this policy options paper.

Public Law 94-142*	Public Law 94-142 Regulations**
"Sec. 615. (a) Any State educational agency, and local educational agency, and any intermediate educational unit which receives assistance under this part shall establish and maintain procedures in accordance with subsection (b) through subsection (e) of this section to assure that handicapped children and their parents or guardians are guaranteed procedural safeguards with respect to the provision of free appropriate public education by such agencies and units. "(b)(1) The procedures required by this section shall include, but shall not be limited to-- "(A) an opportunity for the parents or guardian of a handicapped child to examine all relevant records with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child; "(B) procedures to protect the rights of the child whenever the parents or guardian of the child are not known, unavailable, or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State educational agency, local educational agency, or intermediate educational unit involved in the education or care of the child) to act as a surrogate for the parents or guardian.	§121a.514 Surrogate parents. (a) General. Each public agency shall insure that the rights of a child are protected when: (1) No parent (as defined in §121a.10) can be identified; (2) The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or (3) The child is a ward of the State under the laws of that State. (b) Duty of public agency. The duty of a public agency under paragraph (a) of this section includes the assignment of an individual to act as a surrogate for the parents. This must include a method (1) for determining whether a child needs a surrogate parent, and (2) for assigning a surrogate parent to the child. (c) Criteria for selection of surrogates. (1) The public agency may select a surrogate parent in any way permitted under State law. (2) Public agencies shall insure that a person selected as a surrogate: (i) Has no interest that conflicts with the interests of the child he or she represents; and (ii) Has knowledge and skills, that insure adequate representation of the child.
57	58

Public Law 94-142*	Public Law 94-142 Regulations*
	(d) Non-employee requirement; compensation. (1) A person assigned as a surrogate may not be an employee of a public agency which is involved in the education or care of the child. (2) A person who otherwise qualifies to be a surrogate parent under paragraph (c) and (d)(1) of this section, is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent. (e) Responsibilities. The surrogate parent may represent the child in all matters relating to: (1) The identification, evaluation, and educational placement of the child, and (2) The provision of a free appropriate public education to the child.
*Source: U.S. Congress, Public Law 94-142 (The Education for All Handicapped Children Act of 1975), 20 U.S.C. 1415 ff.	**Source: P.L. 94-142 Regulations, Federal Register, Vol. 42, No. 163, August 23, 1977.

REFERENCES

Abeson, Alan R., Bolick, Nancy, and Hass, Jayne. A Primer on Due Process. Reston, Va.: The Council for Exceptional Children, 1975.

American Bar Association. Guardianship & Conservatorship. Draft Discussion Edition. Washington, D.C.: The Developmental Disabilities State Legislative Project of the ABA Commission on the Mentally Disabled, 1979.

Bersoff, Donald N. "Procedural Safeguards." Developing Criteria for Evaluation of Due Process Procedural Safeguards Provisions. Washington, D.C.: The United States Office of Education, Bureau of Education for the Handicapped, Division of Innovation and Development, State Program Studies Branch, 1978, 63-142.

Biaggi, Mario. "Statement on Foster Care: Problems and Issues." Hearing Before the Subcommittee on Select Education of the Committee on Education and Labor, September 8, 1976, House of Representatives, Ninety-Fourth Congress, Second Session. Washington, D.C.: U.S. Government Printing Office, 1976.

Carey, Judith A. and Strauch, James D. Facilitator's Manual. Hartford, Ct.: Connecticut State Department of Education, Surrogate Parents Training Program, 1978.

Children's Defense Fund. Children Without Homes: An Examination of Public Responsibility to Children in Out-of-Home Care. Project Director, Jane Knitzer. Washington, D.C.: Children's Defense Fund, 1978.

Gater, Bradley N. Unresolved Legal Issues in the Education of Exceptional Children. Unpublished Paper. New Orleans, La.: Tulane University School of Law, 1979.

Gerry, Martin. "Will the Courts Rule Here Too." Monthly Memo: Institute of Educational Leadership. Washington, D.C.: The George Washington University, Education of the Handicapped Policy Project, 53, May 1979.

Higgins, Scottie Torres and Barresi, Josephine. "The Changing Focus of Public Policy." Exceptional Children, 45, 4, 1979, 270-277.

Knitzer, Jane, Allen, Mary Lee, and McGowan, Brenda. Children Without Homes: An Examination of Public Responsibility to Children in Out-of-Home Care. Washington, D.C.: Children's Defense Fund, 1978.

Kotin, Lawrence. "Memorandum" to the Surrogate Parent Conference Participants, held in Washington, D.C. on July 26-27, 1979. Boston, MA: The Federation for Children With Special Needs, Inc., July 6, 1979.

_____. Analysis of the Legal Issues Involved in Implementing the Surrogate Parent Requirement of P.L. 94-142. Boston, MA: The Federation for Children With Special Needs, Inc., 1979.

McGoff, Ruth and Oxholm, Kimberly. "Memorandum" to All Group Care Workers concerning the "Surrogate Parent Project." Boston, MA: The Commonwealth of Massachusetts, Department of Public Welfare, January 12, 1979.

McLaughlin, John A. and London, Samuel B. "Surrogate Parenting: The Extent to Which State Education Agencies Have Begun to Comply." Exceptional Children, 46, 3, 1979, 211-216.

Mackay, Richard V. Guardianship and the Protection of Infants: Law for the Parent and Guardian. New York, NY: Oceana Publications, 1957.

Mattie T. v. Holladay, C.A. No. DC-75-31-S (N.D. Miss).

Moore, Jean J. and Mason, Doris. Information Packet on Surrogate Parents. Salt Lake City, UT: University of Utah, Department of Special Education, April, 1978.

Morra, Linda G. "Introduction." Developing Criteria for Evaluation of Due Process Procedural Safeguards Provisions. Washington, D.C.: The United States Office of Education, Bureau of Education for the Handicapped, Division of Innovation and Development, State Program Studies Branch, 1978, 6-12.

National Association of State Mental Retardation Program Directors (NASMRPD). State Legislative Summary. Arlington, Va.: January, 1979.

O'Donnell, Tom. "The Role of the Surrogate Parent: An Advocate's View." Amicus, 2, 4, 1977, 28-30.

Sage, Daniel. "Organization of Referral and Placement Systems." In Johnson Richard and Kowalski, Anthony (eds.). Perspective on Implementation of The Education for All Handicapped Children Act of 1975. Washington, D.C.: The Council of the Great City Schools, 1977.

Shyne, A. and Schroeder, A. National Study of Social Services to Children and Their Families - Overview. Washington, D.C.: Children's Bureau, Office of Human Development Services, Administration for Children, Youth and Families, HEW, 1978.

Thomas, Karen. Vermont Surrogate Parent Program. Burlington, Vt.: Vermont State Department of Education, 1978.

U.S. Bureau of the Census. Census of Population: 1970 - Subject Reports, Persons by Family Characteristics, Final Report. Washington, D.C.: U.S. Government Printing Office, 1973.

U.S. Congress. Public Law 93-112 (Rehabilitation Act of 1973), Section 504 29 U.S.C. 794, (1973); Section 504 Regulations, Federal Register, Vol. 42, No. 86, May 4, 1977.

U.S. Congress. Public Law 94-142 (The Education for All Handicapped Children Act of 1975), 20 U.S.C. 1401; P.L. 94-142 Regulations, Federal Register, Vol. 42, No. 163, August 23, 1977.

Weintraub, Frederick. "Statement of The Council for Exceptional Children to the Subcommittee on the Handicapped of the Senate Human Resources Committee with Respect to The Education for All Handicapped Children Act of 1975." Reston, Va.: The Council for Exceptional Children, June 21, 1977.

Yohalem, Daniel. "Memorandum" to the Surrogate Parent Conference held in Washington, D.C. on July 26-27, 1979 concerning the Surrogate Parent Requirement Within the Framework of P.L. 94-142. Washington, D.C.: Children's Defense Fund, July 25, 1979.